

In the Matter of License No. 257821 Merchant Mariner's Document No. Z-215863 and all other Seaman Documents

Issued to: ERNEST K. PETERSEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1231

ERNEST K. PETERSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 30 March 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as the Third Mate on board the United States SS SANTA OLIVIA under authority of the license above described, on or about 8 September 1959, Appellant wrongfully refused to obey a lawful order of the Master and wrongfully failed to stand his assigned sea watch.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Master and the helmsman on watch at the time of the incident in issue. Appellant testified and also called the Purser as his witness. Only the Master, Appellant and helmsman were on the bridge at the time of the alleged offenses. Both parties submitted documentary exhibits in evidence.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months outright plus three months on twelve months' probation.

FINDINGS OF FACT

On 8 September 1959, Appellant was serving as the Third Mate on board the United States SS SANTA OLIVIA and acting under authority of his license while the ship was at sea.

Appellant relieved the Second Mate for the 0800 to 1200 watch on this date. The ship was on a southerly course about twenty miles off the west coast of South America and the visibility was good. There were no other vessels in sight although fishing vessels frequented these waters. When Appellant came on watch, he

ordered the helmsman to shift from automatic to manual steering. This was done.

The Master came on the bridge about 0830 and asked the helmsman why he was steering by hand. When told that manual steering had been ordered by Appellant, the Master questioned Appellant about it and ordered him to change to automatic steering. Appellant argued with the Master, stating that it was safer to steer manually because of the possibility of meeting fishing vessels. The Master told Appellant that this was an order and Appellant was disobeying it. When Appellant still did not obey, the Master assisted the helmsman in shifting to automatic steering.

The argument between the Master and Appellant continued for a short time before the Master sent for the Chief Mate to relieve Appellant. A few minutes later the Chief Mate came to the bridge and relieved Appellant for the balance of the watch.

Appellant's prior record consists of a probationary suspension in 1951 for failure to stand watch on several occasions.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

1. The decision is contrary to the weight of the evidence and is based on the prejudiced testimony of the Master.
2. The Examiner erred in his interpretation of the evidence and in his findings.
3. The order is excessive.

APPEARANCE: Marvin Schwartz of New York City, by James P. O'Connell, Esquire, of Counsel.

OPINION

Appellant has submitted no details in support of his general exceptions to the Examiner's decision.

A review of the record discloses that the Examiner accepted the testimony of the Master and helmsman as to the facts that a direct order was given to Appellant by the Master, the visibility was good, the ship was approximately twenty miles off the coast, and there were no visible obstructions to navigation in the vicinity. This is opposed to Appellant's repeated denials that he was given an order by the Master, and his statement that it was hazy. The Examiner, as the trier of the facts, is the proper person to make findings as to the credibility of the witnesses. Therefore, since the accepted evidence shows that an order was given and it would not have endangered the safety of the ship to carry it out, it was a lawful order which Appellant was obligated to obey. In The Shawnee (D. C.

Wisc. 1891), 45 Fed. 769, it was stated:

"The primary and paramount duty of the sailor is implicit obedience to every lawful command. He cannot be permitted to debate the propriety of the Master's orders, and the courts of admiralty will not tolerate any hesitation in prompt and active obedience, It is only the extremity of danger that will justify resistance to even the rash and improper exercise of the master's authority."

The allegation that Appellant refused to obey a lawful order of the Master is supported by the evidence.

Concerning the alleged wrongful failure of Appellant to stand the balance of his watch, the finding that this was proved is reversed and the specification is dismissed. When the Examiner stated that "it became necessary to relieve the person charged from his watch due to his recalcitrant conduct," the Examiner accepted, by implication, the testimony that the Master sent for the Chief Mate and told him to relieve Appellant for the balance of the watch. Consistent with this, the Master testified that he signed, without comment, a logbook entry made by Appellant that he was relieved by the Chief Mate on the bridge. This seems to be the most acceptable evidence in the absence of any specific determination by the Examiner based on the confusion of other conflicting evidence that Appellant left the bridge of his own accord before he was relieved, the Master ordered Appellant to leave the bridge, and the Master sent for the Chief Mate because Appellant had left the bridge. Having accepted the version that the Master forced Appellant to be relieved, the latter cannot be found guilty of wrongfully having failed to stand the balance of his watch.

In view of the dismissal of the less serious of the two offenses alleged, the order will be modified to eliminate the probationary suspension. The outright suspension imposed is not considered to be excessive for the failure of a ship's officer to obey an order of the Master.

ORDER

The order of the Examiner dated at New York, New York, on 30 March 1960, is modified to provide for a suspension of three months.

As so MODIFIED, the order is AFFIRMED.

J.A. HIRSHFIELD
Vice Admiral, United States Coast Guard

Acting Commandant

Signed at Washington, D.C., this 14th day of April 1961.